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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,758	07/08/2003	Dennis L. Reeves	MRMC 01-54CIP 14	6113
27370 7590 01/09/2008 OFFICE OF THE STAFF JUDGE ADVOCATE U.S. ARMY MEDICAL RESEARCH AND MATERIEL COMMAND ATTN: MCMR-JA (MS. ELIZABETH ARWINE) 504 SCOTT STREET FORT DETRICK, MD 21702-5012			EXAMINER ASTORINO, MICHAEL C	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/614,758

Applicant(s)

REEVES ET AL.

Examiner

Michael C. Astorino

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The Examiner acknowledges the letter November 10, 2003 stating, “[p]lease be advised that this application includes claims copied from U.S. Patent No. 6,416,472 for the purposes of provoking for the purposes of provoking an [interference.]”

#### *Priority*

Applicant claims priority to 60/289,116 which is not the correct provisional application number. Provisional application number 60/289,116 shares no common inventor with the present Application number 10/614,758. Apparently the correct provisional application number is 60/289,125. That provisional application shares the two named inventors in this application.

**Applicant is directed to MPEP 201.11(F), titled “F. Correcting or Adding a Benefit Claim After Filing,” to correct the priority.**

#### Note to Applicant Regarding Priority After Correcting Priority

The Examiner has reviewed the apparently correct provisional application number 60/289,125 and finds no support for the pending claims in this case. Below is an explanation of the lacking disclosure in which the Applicant is invited to respond.

*Claim 1: “. . . only four cognitive tests including a Simple Reaction Test, a Running Memory Continuous Performance test, a Matching to Sample test, and a Mathematical Processing test.”*

Examiner’s interpretation: the Applicant mentions the use of 25 tests on pages 18, 19, and 20 of the provisional case. In fact page 4, states “this may be any or all of the cognitive

programs in any order.” However, the broad statement is not sufficient to claim a closed-ended group of four tests in a method claim. Additionally as to claim 2, the claim states further specificity that the order of the group is set to the one listed. The provisional application makes no mention of specificity regarding the order of the tests. Additionally, the non-disclosure of the specific limitations in claims 3 and 4 is also lacking.

*Claim 5: “ . . . comparing scores received on the cognitive tests to a baseline.”*

Examiner’s interpretation: Applicant fails to mention this step in the provisional application. It is clear the Applicant performs a statistical analysis program however, the provisional application lacks specific disclosure of “ . . . comparing scores received on the cognitive tests to a baseline.”

Additionally, Applicant fails to provide disclosure regarding the performance of “ . . . only four cognitive tests[,]” and the non-disclosure of the specific limitations in claims 6, 7, 8, and 9 is also lacking.

*Claim 10. “ . . . a baseline stored in the memory, means for computing a score on a run of the tests and for storing the score in the memory; the means for computing being operative for comparing the score to the stored baseline; and means for indicating a cognitive change from the baseline.”*

Examiner’s interpretation: Applicant fails to mention the use of a baseline in the provisional application. Also, the means for computing, means for storing, means for computing, and means for indicating is lacking in the disclosure of the provisional application.

***Specification***

The disclosure is objected to because of the following informalities: priority in the first paragraph needs to be corrected in page 1, line 5, from "60/289,116" to "60/289,125."

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 5, the transitional phrase "including" is recognized as an open-ended term, see MPEP 2111.03 [R-3]. However, the phrase "only" is a restrictive closed-ended term which is contradictory with open-ended phrase "including." As such it is unclear to the examiner if the claim excludes additional, un-recited elements or method steps.

***Claim Rejections - 35 USC § 102***

The Examiner has used Cady et al. US Patent Number 6,066,092, as a 35 U.S.C. 102(b) reference at least because priority has not been granted to 60/289,125. First, the priority date of this application does not reach back to the 102(b) date because Applicant has not cited the correct provisional application number in the Declaration and Power of Attorney for a Patent Application. And, second because it is the examiner position that even if priority to the corrected application number has been corrected the Applicant's priority date does not reach back to before

May 23, 2000 because it lacks support in that provisional applications disclosure for the claims.

Otherwise stated, the provisional application 60/289,125 dated May 8, 2001 lacks disclosure for the claims in this application.

However for purposes of furthering prosecution, the Examiner reminds the Applicant that even if the 35 USC 102(b) rejection is withdrawn because of the priority date of the provisional application 60/289,125, the novelty rejection would be converted to a rejection under 35 USC 102(e).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cady et al. US Patent Number 6,066,092.

1. A method of measuring cognitive efficiency in a human including performing only four cognitive tests including a Simple Reaction Time test, a Running Memory Continuous Performance test, a Matching to Sample test, and a Mathematical Processing test. (*See Cady et al. claim 1; and see also figures 1, 1A and 2*)

2. A method of measuring cognitive efficiency in a human as set forth in claim 1, wherein the

cognitive tests are performed in the order listed. *(See Cady et al. column 3, lines 22-31)*

3. A method of measuring cognitive efficiency in a human as set forth in claim 1, wherein the cognitive tests are preceded by the steps of performing a Stanford Sleepiness Scale test and a Mood Scale 2 test. *(See Cady et al. figure 2, element numbers 101 and 102)*

4. A method of measuring cognitive efficiency in a human as set forth in claim 1, including the steps of administering and scoring the cognitive tests by a computer, and storing the scores received on the cognitive tests in the computer. *(See Cady et al. figure 1 and claim 12)*

5. A method of measuring change in cognitive efficiency in a human including: performing only four cognitive tests; and, comparing scores received on the cognitive tests to a baseline. *(See Cady et al. claim 1; and see also figures 1, 1A and 2)*

6. A method of measuring change in cognitive efficiency in a human as set forth in claim 5, wherein the step of performing cognitive tests include performing a Simple Reaction Time test, a Running Memory Continuous Performance test, a Matching to Sample test, and a Mathematical Processing test. *(See Cady et al. claim 1; and see also figures 1, 1A and 2)*

7. A method of measuring change in cognitive efficiency in a human as set forth in claim 6, wherein the cognitive tests are performed in the order listed. *(See Cady et al. column 3, lines 22-31)*

8. A method of measuring change in cognitive efficiency in a human as set forth in claim 6, wherein the steps of performing cognitive tests are preceded by the steps of performing a Stanford Sleepiness Scale test and a Mood Scale 2 test. *(See Cady et al. figure 2, element numbers 101 and 102)*

9. A method of measuring change in cognitive efficiency in a human as set forth in claim 5, including the steps of administering and scoring the cognitive tests by a computer, and storing the scores received on the cognitive tests in the computer. *(See Cady et al. figure 1 and claim 12)*

10. A device for measuring change in cognitive efficiency in a human including a memory, a battery of cognitive tests loaded into the memory including a Simple Reaction Time, a Running Memory Continuous Performance Task, a Matching to Sample, and a Mathematical Processing Task; a baseline stored in the memory, means for computing a score on a run of the tests and for storing the score in the memory; the means for computing being operative for comparing the score to the stored baseline; and means for indicating a cognitive change from the baseline. *(See Cady et al. claim 1; and see also figures 1, 1A and 2)*

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.



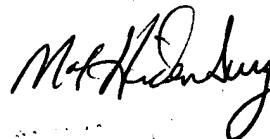
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael Astorino  
January 3, 2008

A handwritten signature in black ink, appearing to read "Max Hindenburg", is located in the lower right quadrant of the page.